

Joint Commission's Deeming Authority Under Fire

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As **The Children's Health and Medicare Protection Act of 2007** sails through Congress this month, the Joint Commission's deeming authority may be sinking in its wake. **Section 507 of the version passed by the House of Representatives calls for revocation of the unique statutory protection and deeming authority that the Joint Commission (formerly Joint Commission on Accreditation of Healthcare Organization or JCAHO) enjoys under existing Federal law.** http://www.advocatealliance.net/documents/CHIP_2007.pdf (The Senate version of the bill does not include Section 507.) The significance of this potential revocation seems lost in the hoopla surrounding the pending passage of this bill.

To understand the significance, a little history is in order. The Centers for Medicare and Medicaid Services (CMS), the agency responsible for administering Medicare, has established quality and patient safety requirements called Conditions of Participation (CoPs). **In order to be eligible for Medicare payments, hospitals must meet the standards set forth in the CoPs.** CMS relies on two types of external review to ensure that hospitals meet the CoPs: accreditation [by Joint Commission or the American Osteopathic Association (AOA)] and certification by State Agencies. Accreditation is a form of self-regulation for which hospitals pay a fee. Hospitals that are not accredited by Joint Commission or the AOA can go through the Medicare certification process for free.

The Joint Commission is a private, not-for-profit organization that accredits approximately 80% of hospitals that participate in Medicare. The AOA accredits 2 % and States Agencies certify the rest.

Joint Commission enjoys unique status because, by Federal statute, hospitals accredited by the Joint Commission are deemed to meet the Medicare conditions of participation. 42 U.S.C. §§1395bb(a). In contrast, the AOA and any other accreditation body CMS might deem is subjected to CMS's direct review and approval. 42 U.S.C. §§1395bb(b).

The Joint Commission has more than once come under fire for failing to enforce hospital patient safety standards. In its July, 1999 report The Department of Health and Human Services Inspector General concluded that the Joint Commission surveys are unlikely to detect substandard patterns of care or individual practitioners with questionable skills. The Report recommended that the Health Care Financing Administration (later named CMS) increase its oversight of Joint Commission. (Department of Health and Human Services, Office of Inspector General, *The External Review of Hospital Quality: a Call for Greater Accountability*, OEI-01-97-00050 (Washington, D.C.: July, 1999). <http://oig.hhs.gov/oei/reports/oei-01-97-00050.pdf>)

In its July, 2004 report, the Government Accountability Office (GAO) concluded that 78% of the time the Joint Commission survey process did not identify serious deficiencies that were found by State Survey Agencies. The GAO recommended that “given the serious limitations in (Joint Commission’s) accreditation program and that efforts to improve this program through informal action by CMS have not led to necessary improvements, Congress should consider giving CMS the same kind of authority over (Joint Commission’s) hospital accreditation program that it has over all other Medicare accreditation programs.” (U.S. General Accounting Office, *Medicare, CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals*, GAO-04-850 (Washington, D.C.: July, 2004). <http://www.gao.gov/new.items/d04850.pdf>)

The GAO has also investigated the relationship between Joint Commission and its consulting company Joint Commission Resources, warning of the need to enforce firewall protections to ensure integrity of the accreditation process. U.S. General Accounting Office, *Hospital Accreditation, Joint Commission on Accreditation of Healthcare Organizations’ Relationship with Its Affiliate*,” GAO-07-79 (Washington, D.C.: December, 2006) <http://www.gao.gov/new.items/d0779.pdf>

CMS concurred with the GAO’s 2004 recommendations and **Joint Commission stated that it had no objection to the recommendation that Congress give CMS the same authority over Joint Commission as it has over other accrediting programs.** Therefore, depending on the final language hammered out in conference between the House and Senate, the Joint Commission’s protected deeming authority could be revoked eighteen months after The Children’s Health and Medicare Protection Act of 2007 is passed into law.

Should that occur, only time will tell how the change will impact the Joint Commission’s hospital accreditation program, and its relationship with CMS.